



LAW OFFICE OF  
**DAVID A. LUDDER**  
A Professional Limited Liability Company



0504

May 14, 2016

**Delivered Via Certified Mail**

**Return Receipt Requested**

**No. 7008 1300 001 2360 3480**

James T. Martin, Chief Executive Officer  
Chuck Corley, Director of Operations  
Creek Indian Enterprises Development Authority  
100 Brookwood Road  
Atmore, Alabama 36502

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**No. 7008 1300 0001 2360 3497**

Floyd A. Davis, Vice-Chair  
Public Athletic and Sports Facilities Cooperative District of the City of Foley  
407 East Laurel Avenue  
Foley, Alabama 36535

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**No. 7008 1300 0001 2360 3503**

William F. Killian, President  
Christian Mills, Project Manager  
Adam Topolnicki, Project Superintendent  
Killian Construction Co.  
2664 East Kearney  
Springfield, Missouri 65803

**Delivered Via Certified Mail**

**Return Receipt Requested**

**No. 7008 1300 0001 2360 3510**

Floyd A. Davis, Chair  
Public Cultural and Entertainment Facilities Cooperative District of the City of Foley  
407 East Laurel Avenue  
Foley, Alabama 36535

Re: **Notice of Intent to Sue for Violations of Clean Air Act**

Dear Messrs. Martin, Davis, Corley, Killian, Mills, and Topolnicki:

Pursuant to the Clean Air Act § 304(b)(1)(A), 42 U.S.C. § 7604(b)(1)(A), and 40 C.F.R. Part 54, you are hereby notified that after the expiration of sixty (60) days following service of

this notice, the following Parish Lakes Subdivision residents may file suit against the entities named above for violations of an emission standard or limitation under the Clean Air Act:

William and Judy Ward	2041 Bourbon St., Foley, AL
Richard and Carol Furman	676 Parish Lakes Dr., Foley, AL
Nicole and Richard Lindsey	725 Parish Lakes Dr., Foley, AL
Scott and Sara Wilson	2041 Tammany Ct., Foley, AL
Quantae and Lelia McCutchen	648 Parish Lakes Dr., Foley, AL
Richard and Monica Schmidt	653 Parish Lakes Dr., Foley, AL
Curt and Connie Phillips	2081 Bourbon St., Foley, AL
William and Mulvina Dalton	2025 Bourbon St., Foley, AL
Paul and Debra Workman	2033 Bourbon St., Foley, AL
James and Gloria Ferguson	2037 Bourbon St., Foley, AL
Bruce and Rose Mary Asman	2085 Bourbon St., Foley, AL
Kenneth C. and Patricia Cowley	2093 Bourbon St., Foley, AL
Edward and Lynell Ghelardini	2097 Bourbon St., Foley, AL
Michael T. and Dana Woolf	2030 Mandeville Lane, Foley, AL

On May 31, 1972, the Administrator of the U.S. Environmental Protection Agency approved the "Air Quality Implementation Plan for the State of Alabama," including Section 4.2.2 of the Rules and Regulations of the Alabama Air Pollution Control Commission. 37 Fed. Reg. 10842 (May 31, 1972). Section 4.2.2 was recodified at Ala. Admin. Code r. 335-3-4-.02(2) in 1989. *See* 55 Fed. Reg. 10062 (Mar. 19, 1990). It provides:

**Visible Emissions Restrictions Beyond Lot Line.** No person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.

The Alabama Department of Environmental Management has neither repealed Ala. Admin. Code r. 335-3-4-.02(2) nor submitted a revision of the State implementation plan to delete Ala. Admin. Code r. 335-3-4-.02(2) from the plan. The Administrator of the U.S. Environmental Protection Agency has not approved a revision of the State implementation plan that does not include Ala. Admin. Code r. 335-3-4-.02(2). Accordingly, Ala. Admin. Code r. 335-3-4-.02(2) is a standard or limitation established under an applicable State implementation plan approved by the Administrator and is in effect under an applicable State implementation plan.

The Creek Indian Enterprises Development Authority, the Public Athletic and Sports Facilities Cooperative District of the City of Foley, Killian Construction Co., and the Public Cultural and Entertainment Facilities Cooperative District of the City of Foley are and have been

engaged in construction activities, including land clearing activities, in an area south and southeast of the Parish Lakes Subdivision in the City of Foley, Alabama. See attached map. These areas have been frequently identified as the Foley Sports Tourism Complex, the Foley Events Center, and Blue Collar Country. These construction activities have resulted in and continue to result in the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate in violation of the applicable State implementation plan for the State of Alabama, specifically Ala. Admin. Code r. 335-3-4-.02(2). These visible fugitive dust emissions occurred on at least the following dates:

April 3, 2015, April 24, 2015, February 15, 2016, March 7, 2016, March 8, 2016, March 9, 2016, April 6, 2016, April 9, 2016, April 10, 2016, April 11, 2016, April 17, 2016, April 19, 2016, April 20, 2016, April 21, 2016, April 22, 2016, April 25, 2016, April 26, 2016, April 30, 2016, May 1, 2016, May 5, 2016

The Clean Air Act authorizes injunctive relief and civil penalties up to \$37,500 per day per violation. In addition, the Act authorizes the award of costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines that such an award is appropriate. Suit may be avoided if these violations have ceased before the expiration of 60 days following service of this notice. Please advise the undersigned of any measures which you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Ludder". The signature is fluid and cursive, with the first name "David" being more prominent.

David A. Ludder  
Attorney for above-named individuals



Creek Indian Enterprises Development Authority  
May 14, 2016  
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cc:

**Certified Mail No. 7008 1300 0001 2360 3527**

Killian Construction Co.  
% National Registered Agents, Inc.  
2 North Jackson Street, Suite 605  
Montgomery, AL 36104

Hon. Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Hon. Heather McTeer Toney  
U.S. Environmental Protection Agency-Region 4  
61 Forsyth Street SW  
Atlanta, GA 30303

Hon. Lance LeFleur, Director  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, AL 36130-1463